

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

United States Courts
Southern District of Texas
FILED

JAN 06 2020

KEVIN LAVINE

Plaintiff

vs.

UNITED STATES OF AMERICA

Defendant

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§
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§
§

David J. Bradley, Clerk of Court

Civil Action No. _____

COMPLAINT

COMES NOW, Kevin Lavine, and hereby files this Complaint against the United States of America for damages due to injuries sustained as a result of careless and negligent health care at Michael E. DeBakey VA Medical Center in Houston, Texas. In support thereof, Plaintiff would show the following, to wit:

PARTIES

1. Kevin Lavine ("Plaintiff") is a veteran of the United States Army and an adult resident of the State of Mississippi.

2. The United States of America ("Defendant" or "United States"), through its agents and through the Department of Veterans' Affairs, a federal agency, owned, controlled, operated, and managed, at all relevant times mentioned herein, the Michael E. DeBakey VA Medical Center ("Medical Center") in Houston, Texas, and therefore, is properly named as the Defendant in this action.

JURISDICTION AND VENUE

3. This health care liability action arises under the Federal Tort Claims Act, 28 U.S.C. §§ 2674, *et seq.* and 1346(b), as these claims are for personal injury caused by the negligent and wrongful acts and omissions of employees of the federal government while acting within the course and scope of their employment, under circumstances where the United States, if a private person, would be liable to Plaintiff in accordance with the laws of the place where the acts or omissions occurred.

4. Pursuant to 28 U.S.C. § 1391, the United States District Court for the Southern District of Texas, Houston Division, is the proper venue for this lawsuit because the cause of action arose at the Medical Center in Harris County.

FACTS

5. Plaintiff presented to the Medical Center on March 1, 2019 to undergo a complex total knee arthroplasty (replacement) to his right knee.

6. Less than 18 hours after surgery, on the morning of March 2, 2019 (post-operative day 1), Plaintiff, while undergoing an occupational therapy consult with Sasha Hill, OTR, CLT (“Hill”), fell and sustained a traumatic wound dehiscence down to the level of the new implant in his knee, a component dislocation, and a copious hematoma that required immediate irrigation and debridement surgery.

7. Hill and/or the Medical Center carelessly and negligently cared for Plaintiff in one or more of the following ways:

- (a) Despite Plaintiff’s size at 6 ft. 4 in, 300 lbs., a disproportionate patient to weight ratio, nurse notations and assessments that Plaintiff “overestimates [and] forgets limitations” with respect to fall risk, Hill – the attending occupational therapist – did not utilize (or even possess) a gait belt, walker, or any other stabilizing device to assist Plaintiff, prevent him from falling, or otherwise help him accomplish the tasks required of him during the occupational consult.

- (b) Upon information and belief, Hill failed to adhere to internal safety procedures and training for post-operative occupational therapy consults in similarly-situated patients as Plaintiff.
- (c) The Medical Center failed to employ adequate safeguards, procedures, training, and/or supervision internally for post-operative occupational therapy consults in similarly-situated patients as Plaintiff.

8. The foregoing careless and negligent acts and omissions of Hill and/or the Medical Center in providing and furnishing health care to Plaintiff were significant departures from acceptable standards of care for similarly-situated health care providers and institutions.

9. As a direct and proximate result of such negligence, Plaintiff fell and suffered serious and painful personal injuries, which resulted in him being mechanically lifted off the floor in humiliation and forced him to endure an additional, unscheduled surgery, severe blood loss (for which he received three units of blood via transfusion), a significant amount of pain and suffering, additional physical and occupational therapy, a prolonged recovery, and unnecessary physical and mental and emotional distress.

10. Hill, at all relevant times mentioned herein, was a duly authorized agent and/or employee of the United States acting in the course and scope of her employment with the Medical Center at the time of the relevant negligence.

11. The United States is legally responsible for the negligence of Hill and/or the Medical Center under principles of agency, respondeat superior, and vicarious liability, and is thus being sued for same.

PRE-SUIT REQUIREMENTS

12. On or about April 2, 2019, in conformity with 28 U.S.C. § 2675, Plaintiff, by and through undersigned counsel, presented a written notice of claim (i.e., Form 95) to the Office of

Regional Counsel for the Department of Veterans' Affairs, setting forth his claim for damages in the amount of \$250,000.00. *See Exhibit 1*, attached hereto.


13. Plaintiff's administrative claim was constructively denied on or about October 8, 2019, as the Office of Regional Counsel for the Department of Veterans' Affairs failed to respond within six (6) months of the date of receipt. *See Exhibit 2*, attached hereto.

14. On or about October 24, 2019, Plaintiff, out of an abundance of caution, provided the United States, the Department of Veterans' Affairs, and the Medical Center a Notice of Intent to Sue and HIPPA Authorization in conformity with §§ 74.051–52 of the Texas Civil Practice and Remedies Code. *See Exhibit 3*, attached hereto.

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully requests a judgment against Defendant in an amount within the jurisdictional limits of this Court for the following:

- a. Past, present, and future physical pain and suffering;
- b. Past, present, and future mental and/or emotional pain, anguish, or distress;
- c. Past, present, and future inconvenience;
- d. Past, present, and future physical impairment or disfigurement;
- e. Past, present, and future loss of enjoyment of life;
- f. Plaintiff's attorneys' fees and costs of suit; and/or
- g. Any such other relief as the Court may deem just and proper, including any and all general, compensatory and special damages in sums according to proof;

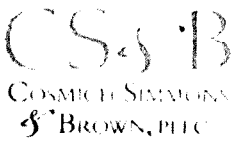
RESPECTFULLY SUBMITTED, this the 3rd day of January, 2020.


Walker W. Jones, III (TX Bar No. 796003)
Brannon L. Berry (MS Bar No. 104811)
COSMICH, SIMMONS & BROWN, PLLC

100 Vision Drive, Suite 200
Jackson, Mississippi 39211
Telephone: 601-863-2100
Facsimile: 601-863-0078
Email: bill.jones@cs-law.com
Email: Jason.elam@cs-law.com

ATTORNEYS FOR PLAINTIFF

EXHIBIT 1



Attorneys & Counselors at Law

ONE EASTOVER CENTER
100 VISION DRIVE, SUITE 200
JACKSON, MS 39211
T 601.863.2100
F 601.863.0078
WWW.CS-LAW.COM

Walker W. ("Bill") Jones, III
bill.jones@cs-law.com
Direct Dial: (601) 519-0321
Facsimile: (601) 863-0078

POST OFFICE BOX 22626
JACKSON, MS 39225-2626

April 2, 2019

VIA U.S. MAIL

Department of Veterans Affairs
Office of Regional Counsel (02)
Attn: Kevin Curtis
6900 Almeda Road
Houston, TX 77030

HATTIESBURG, MS
NEW ORLEANS, LA
COVINGTON, KY
SCOTTSDALE, AZ
GRAND RAPIDS, MI
ST. LOUIS, MO
PITTSBURGH, PA

RE: Kevin Lavine – March 2, 2019 Incident and Injury at Michael E. DeBakey
VA Medical Center

Dear Mr. Curtis:

Please find enclosed Kevin Lavine's Form SF 95 *Claim for Damage, Injury or Death* for the fall he suffered on March 2, 2019 during an occupational consult—which resulted in him, at 6 ft. 4 in., 300 lbs., being mechanically lifted off the floor and subjected him to additional emergency surgery, blood loss from his newly operated on knee (for which he received two units of blood), and a substantial amount of unnecessary, additional pain and suffering. Despite his size and post-op condition, the attending occupational therapist, Sasha M. Hill, OTR, CLT, did not utilize (nor have) a gait belt, walker, or any other stabilizing device to assist Mr. Lavine or to help Mr. Lavine accomplish the tasks asked of him during the occupational consult. Further, upon information and belief, neither the medical center nor the treating medical providers conducted an adequate and/or proper screening, assessment, or intervention to mitigate or eliminate the risks of a fall or to protect against any potential injuries to his knee should such a fall occur. Accordingly, please accept this offer as full and final satisfaction and final settlement for the injuries caused by the incident reference above and herein.

Warm regards,

Walker W. Jones, III, TX Bar No. 796003
Brannon L. Berry, MS Bar No. 104811
**COSMICH SIMMONS & BROWN,
PLLC**

Attorneys for Kevin Lavine

CLAIM FOR DAMAGE, INJURY, OR DEATH		INSTRUCTIONS: Please read carefully the instructions on the reverse side and supply information requested on both sides of this form. Use additional sheet(s) if necessary. See reverse side for additional instructions.		FORM APPROVED OMB NO. 1105-0008	
1. Submit to Appropriate Federal Agency: Department of Veterans Affairs			2. Name, address of claimant, and claimant's personal representative if any. (See instructions on reverse.) Number, Street, City, State and Zip code. Kevin Lavine 113 Pinnacle Cove Madison, MS 39110		
3. TYPE OF EMPLOYMENT <input checked="" type="checkbox"/> MILITARY <input type="checkbox"/> CIVILIAN	4. DATE OF BIRTH [REDACTED]	5. MARITAL STATUS Married	6. DATE AND DAY OF ACCIDENT March 2, 2019 Saturday	7. TIME (A.M. OR P.M.) Approx. 8:50 a.m.	
8. BASIS OF CLAIM (State in detail the known facts and circumstances attending the damage, injury, or death, identifying persons and property involved, the place of occurrence and the cause thereof. Use additional pages if necessary). Claimant fell while attempting to adhere to the demands of the occupational therapist, Sasha M. Hill, OTR, CLT, who, at all relevant times, failed to provide adequate and/or proper assistance or intervention while claimant was attempting to cooperate in the consult. Further, upon information and belief, Ms. Hill, along with the hospital and other treating medical providers, conducted a negligent screening and risk assessment to mitigate, eliminate, and/or protect against any injuries from such a fall.					
9. PROPERTY DAMAGE					
NAME AND ADDRESS OF OWNER, IF OTHER THAN CLAIMANT (Number, Street, City, State and Zip Code). 					
BRIEFLY DESCRIBE THE PROPERTY, NATURE AND EXTENT OF THE DAMAGE AND THE LOCATION OF WHERE THE PROPERTY MAY BE INSPECTED. (See instructions on reverse side). 					
10. PERSONAL INJURY/WRONGFUL DEATH					
STATE THE NATURE AND EXTENT OF EACH INJURY OR CAUSE OF DEATH, WHICH FORMS THE BASIS OF THE CLAIM. IF OTHER THAN CLAIMANT, STATE THE NAME OF THE INJURED PERSON OR DECEDENT. Claimant's fall resulted in (i) an emergency I&D-type surgery to close and clean the reopened incision from his total knee revision surgery completed the previous day and to examine same for damage; (ii) significant blood loss, which required multiple units of blood and the assumption of risks associated with same; (iii) pain and suffering; and (iv) emotional distress.					
11. WITNESSES					
NAME		ADDRESS (Number, Street, City, State, and Zip Code)			
Deirdre Lavine Sasha M. Hill, OTR, CLT		113 Pinnacle Cove, Madison, MS 39110 Houston VA Medical Center			
12. (See instructions on reverse.) AMOUNT OF CLAIM (in dollars)					
12a. PROPERTY DAMAGE	12b. PERSONAL INJURY \$250,000.00	12c. WRONGFUL DEATH	12d. TOTAL (Failure to specify may cause forfeiture of your rights). \$250,000.00		
I CERTIFY THAT THE AMOUNT OF CLAIM COVERS ONLY DAMAGES AND INJURIES CAUSED BY THE INCIDENT ABOVE AND AGREE TO ACCEPT SAID AMOUNT IN FULL SATISFACTION AND FINAL SETTLEMENT OF THIS CLAIM.					
13a. SIGNATURE OF CLAIMANT (See instructions on reverse side).			13b. PHONE NUMBER OF PERSON SIGNING FORM 601-918-0370	14. DATE OF SIGNATURE 4/2/2019	
CIVIL PENALTY FOR PRESENTING FRAUDULENT CLAIM The claimant is liable to the United States Government for a civil penalty of not less than \$5,000 and not more than \$10,000, plus 3 times the amount of damages sustained by the Government. (See 31 U.S.C. 3729).			CRIMINAL PENALTY FOR PRESENTING FRAUDULENT CLAIM OR MAKING FALSE STATEMENTS Fine, imprisonment, or both. (See 18 U.S.C. 287, 1001.)		

INSURANCE COVERAGE

In order that subrogation claims may be adjudicated, it is essential that the claimant provide the following information regarding the insurance coverage of the vehicle or property.

15. Do you carry accident insurance? ☐ Yes If yes, give name and address of insurance company (Number, Street, City, State, and Zip Code) and policy number. ☒ No

16. Have you filed a claim with your insurance carrier in this instance, and if so, is it full coverage or deductible? ☐ Yes ☒ No 17. If deductible, state amount.

18. If a claim has been filed with your carrier, what action has your insurer taken or proposed to take with reference to your claim? (It is necessary that you ascertain these facts).

19. Do you carry public liability and property damage insurance? ☐ Yes If yes, give name and address of insurance carrier (Number, Street, City, State, and Zip Code). ☒ No

INSTRUCTIONS

Claims presented under the Federal Tort Claims Act should be submitted directly to the "appropriate Federal agency" whose employee(s) was involved in the incident. If the incident involves more than one claimant, each claimant should submit a separate claim form.

Complete all items - Insert the word NONE where applicable.

A CLAIM SHALL BE DEEMED TO HAVE BEEN PRESENTED WHEN A FEDERAL AGENCY RECEIVES FROM A CLAIMANT, HIS DULY AUTHORIZED AGENT, OR LEGAL REPRESENTATIVE, AN EXECUTED STANDARD FORM 95 OR OTHER WRITTEN NOTIFICATION OF AN INCIDENT, ACCOMPANIED BY A CLAIM FOR MONEY

Failure to completely execute this form or to supply the requested material within two years from the date the claim accrued may render your claim invalid. A claim is deemed presented when it is received by the appropriate agency, not when it is mailed.

If instruction is needed in completing this form, the agency listed in item #1 on the reverse side may be contacted. Complete regulations pertaining to claims asserted under the Federal Tort Claims Act can be found in Title 28, Code of Federal Regulations, Part 14. Many agencies have published supplementing regulations. If more than one agency is involved, please state each agency.

The claim may be filed by a duly authorized agent or other legal representative, provided evidence satisfactory to the Government is submitted with the claim establishing express authority to act for the claimant. A claim presented by an agent or legal representative must be presented in the name of the claimant. If the claim is signed by the agent or legal representative, it must show the title or legal capacity of the person signing and be accompanied by evidence of his/her authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian or other representative.

If claimant intends to file for both personal injury and property damage, the amount for each must be shown in item number 12 of this form.

DAMAGES IN A SUM CERTAIN FOR INJURY TO OR LOSS OF PROPERTY, PERSONAL INJURY, OR DEATH ALLEGED TO HAVE OCCURRED BY REASON OF THE INCIDENT. THE CLAIM MUST BE PRESENTED TO THE APPROPRIATE FEDERAL AGENCY WITHIN TWO YEARS AFTER THE CLAIM ACCRUES.

The amount claimed should be substantiated by competent evidence as follows:

- (a) In support of the claim for personal injury or death, the claimant should submit a written report by the attending physician, showing the nature and extent of the injury, the nature and extent of treatment, the degree of permanent disability, if any, the prognosis, and the period of hospitalization, or incapacitation, attaching itemized bills for medical, hospital, or burial expenses actually incurred.
- (b) In support of claims for damage to property, which has been or can be economically repaired, the claimant should submit at least two itemized signed statements or estimates by reliable, disinterested concerns, or, if payment has been made, the itemized signed receipts evidencing payment.
- (c) In support of claims for damage to property which is not economically repairable, or if the property is lost or destroyed, the claimant should submit statements as to the original cost of the property, the date of purchase, and the value of the property both before and after the accident. Such statements should be by disinterested competent persons, preferably reputable dealers or officials familiar with the type of property damaged, or by two or more competitive bidders, and should be certified as being just and correct.
- (d) **Failure to specify a sum certain will render your claim invalid and may result in forfeiture of your rights.**

PRIVACY ACT NOTICE

This Notice is provided in accordance with the Privacy Act, 5 U.S.C. 552a(e)(3), and concerns the information requested in the letter to which this Notice is attached.

A. **Authority:** The requested information is solicited pursuant to one or more of the following: 5 U.S.C. 301, 28 U.S.C. 501 et seq., 28 U.S.C. 2671 et seq., 28 C.F.R. Part 14.

- B. **Principal Purpose:** The information requested is to be used in evaluating claims.
- C. **Routine Use:** See the Notices of Systems of Records for the agency to whom you are submitting this form for this information.
- D. **Effect of Failure to Respond:** Disclosure is voluntary. However, failure to supply the requested information or to execute the form may render your claim "invalid."

PAPERWORK REDUCTION ACT NOTICE

This notice is solely for the purpose of the Paperwork Reduction Act, 44 U.S.C. 3501. Public reporting burden for this collection of information is estimated to average 6 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Director, Torts Branch, Attention: Paperwork Reduction Staff, Civil Division, U.S. Department of Justice, Washington, DC 20530 or to the Office of Management and Budget. Do not mail completed form(s) to these addresses.

EXHIBIT 2



U.S. Department of Veterans Affairs
Office of General Counsel

Torts Law Group (021)
810 Vermont Avenue, NW
Washington, DC 20420

Phone: (202) 461-4900

In Reply Refer To: GCL 416874

May 3, 2019

Walker W. Jones
One Eastover Center
100 Vision Drive Suite 200
Jackson MS 39211

RE: Administrative Tort Claim for Kevin Lavine

Dear Mr. Jones

The U.S. Department of Veterans Affairs (VA) received your tort claim on April 8, 2019.

VA has six months from the date your claim was received to consider a claim before you may file suit in federal district court pursuant to the Federal Tort Claims Act (FTCA), sections 1346(b), 2401(b), and 2671-2680, title 28, United States Code.

If you have not been contacted after six (6) months from the date your claim was received, you may contact Ann Gavin-Lawrence at (202) 461-4900.

A combination of federal and state laws governs FTCA claims; some state laws may limit or bar a claim or lawsuit. VA staff handling FTCA claims work for the Federal Government, and cannot provide legal advice on state or federal law filing requirements.

Sincerely,

A handwritten signature in black ink, appearing to read "Kyle Beesley", is written over a horizontal line.

Kyle Beesley
Paralegal Specialist

EXHIBIT 3



Attorneys & Counselors at Law

Brannon L. Berry
brannon.berry@cs-law.com
Direct Dial: (601) 519-0328
Facsimile: (601) 863-0078

October 24, 2019

VIA CERTIFIED U.S. MAIL

United States Department of Justice
Office of Attorney General
Civil Process Clerk
950 Pennsylvania Avenue, NW
Washington, D.C. 20530-0001

ONE EASTOVER CENTER
100 VISION DRIVE, SUITE 200
JACKSON, MS 39211
T 601.863.2100
F 601.863.0078
WWW.CS-LAW.COM

POST OFFICE BOX 22626
JACKSON, MS 39225-2626

BAY ST. LOUIS, MS
HATTIESBURG, MS
NEW ORLEANS, LA
COVINGTON, KY
SCOTTSDALE, AZ
GRAND RAPIDS, MI
ST. LOUIS, MO
PITTSBURGH, PA

RE: Notice of Health Care Liability Claim and Authorizations for Release of
Medical Records; Kevin D. Lavine – March 2, 2019 Incident and Injury
at Michael E. DeBakey VA Medical Center

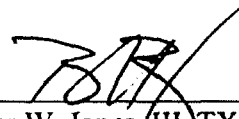
Dear Sir or Madam:

It is my understanding that the Office of General Counsel for the U.S. Department of Veterans Affairs never reviewed and/or was unable to complete its evaluation of Mr. Lavine's claim. In light of the agency's failure to respond within six (6) months from the date the claim was received, I am enclosing the following on behalf of Kevin D. Lavine in accordance with Texas law:

- (1) Notice of Health Care Liability Claim;
- (2) Authorization Form for Release of Protected Health Information (Texas Civil Practice and Remedies Code, Section 74.052);
- (3) Request for and Authorization to Release Health Information (VA Form 10-5345); and
- (4) Correspondence from the Office of General Counsel for the U.S. Department of Veterans Affairs, dated May 3, 2019, acknowledging receipt of administrative tort claim on April 8, 2019.

My hope is that this claim settles with sixty (60) days of your receipt of this letter. Please feel free to contact my at any time. If you cannot reach me at the office, you can call my cell at 601-672-3254.

All that is good,

A handwritten signature in black ink, appearing to be 'W. Jones, III', written over a horizontal line.

Walker W. Jones, III, TX Bar No. 796003

Brannon L. Berry, MS Bar No. 104811

**COSMICH SIMMONS & BROWN,
PLLC**

Attorneys for Kevin D. Lavine (Claimant)

Enclosures

To: United States Department of Justice
Office of Attorney General
Civil Process Clerk
950 Pennsylvania Avenue, NW
Washington, D.C. 20530-0001

CLAIMANT KEVIN D. LAVINE'S NOTICE OF HEALTH CARE LIABILITY CLAIM

Pursuant to the Texas Medical Liability Act, Section 74.051 of the Texas Civil Practice and Remedies Code, please take notice that Kevin D. Lavine has a health care liability claim against Michael E. DeBakey VA Medical Center, 2002 Holcombe Blvd., Houston, Texas 77030 in Harris County, Texas. The claim arises from events surrounding the care received by Kevin D. Lavine on or about March 2, 2019, and thereafter, specifically, for the fall he suffered during an occupational consult --which resulted in him, at 6 ft. 4 in., 300 lbs., being mechanically lifted off the floor and subjected to an additional emergency surgery, blood loss from his newly operated on knee (for which he received two/three units of blood), and a substantial amount of unnecessary, additional pain and suffering.

In short, despite his size and post-op condition, the attending occupational therapist, Sasha M. Hill, OTR, CLT, did not utilize (nor have) a gait belt, walker, or any other stabilizing device to assist Mr. Lavine or to help Mr. Lavine accomplish the tasks asked of him during the occupational consult. On several occasions, Mr. Lavine asked Ms. Hill for her assistance in standing, which she repeatedly refused. When he asked if his wife could assist him (on not one, but two, occasions), Ms. Hill stated, "the devil is a lie." Also, when Mr. Lavine started to fall, after following Ms. Hill's instructions to stand, he attempted to use her arms for support. Ms. Hill's response, however, was to jerk her arms back to prevent him from using her balance and stability. What's worse, after he fell, Ms. Hill made no attempt to render any form of aid or comfort. Further, upon information and belief, neither the medical center nor the treating medical providers conducted an adequate and/or proper screening, assessment, or intervention to mitigate or eliminate the risks of a fall or to protect against any potential injuries to his knee should such a fall occur.

An authorization for release of medical records related to this claim is enclosed as required by Section 74.052 of the Texas Civil Practice and Remedies Code.

If this claim is not settled within 60 days from the date of this notice, claimant will commence a legal action against the United States Department of Veterans Affairs / Michael E. DeBakey VA Medical Center based on this claim.

Dated: 10/24/19

Respectfully submitted,



Walker W. ("Bill") Jones, III, TX Bar No. 796003
Brannon L. Berry, MS Bar No. 104811
Cosmich Simmons & Brown, PLLC
100 Vision Drive, Suite 200
Jackson, MS 39211
T: 601-519-0328
E: brannon.berry@cs-law.com

Attorneys for Kevin D. Lavine



REQUEST FOR AND AUTHORIZATION TO RELEASE HEALTH INFORMATION

PRIVACY ACT AND PAPER WORK REDUCTION ACT INFORMATION: The Paperwork Reduction Act of 1995 requires us to notify you that this information collection is in accordance with the clearance requirements of section 3507 of the Act. We may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a valid OMB number. We anticipate that the time expended by all individuals who must complete this form will average 2 minutes. This includes the time it will take to read the instructions, gather the necessary facts and fill out this form. The execution of this form does not authorize the release of information other than that specifically described below.

The information requested on this form is solicited under Title 38 U.S.C. The form authorizes release of information in accordance with the Health Insurance Portability and Accountability Act, 45 CFR Parts 160 and 164; 5 U.S.C. 552a; and 38 U.S.C. 5701 and 7332 that you specify. Your disclosure of the information requested on this form is voluntary. However, if the information including the last four of your Social Security Number (SSN) and Date of Birth (used to locate records for release) is not furnished completely and accurately, VA will be unable to comply with the request. The Veterans Health Administration may not condition treatment, payment, enrollment or eligibility on signing the authorization. VA may disclose the information that you put on the form as permitted by law. VA may make a "routine use" disclosure of the information as outlined in the Privacy Act system of records notices identified as 24VA10P2 "Patient Medical Record - VA", 08VA05 "Employee Medical File System Records (Title 38)-VA" and in accordance with the Notice of Privacy Practices. VA may also use this information to identify veterans and person claiming or receiving VA benefits and their records, and for other purposes authorized or required by law.

TO: DEPARTMENT OF VETERANS AFFAIRS (*Name and Address of VA Health Care Facility*)

Michael E. DeBakey VA Medical Center
Release of Information Office
2602 Holcombe Blvd.
Houston, TX 77030

LAST NAME- FIRST NAME- MIDDLE INITIAL

Lavine, Kevin D.

LAST 4 SSN

DATE OF BIRTH

NAME AND ADDRESS OF ORGANIZATION, INDIVIDUAL, OR TITLE OF INDIVIDUAL TO WHOM INFORMATION IS TO BE RELEASED

PURPOSE(S) OR NEED: Information is to be used by the individual for:

☐ TREATMENT ☐ BENEFITS ☒ LEGAL ☐ EMPLOYMENT ☐ OTHER (*Please specify*) _____

INFORMATION REQUESTED: Check applicable box(es) and state the extent or nature of information to be provided.

☐ HEALTH SUMMARY (*Prior 2 Years*)

☐ INPATIENT DISCHARGE SUMMARY (*Dates*) _____

☐ PROGRESS NOTES:

☐ SPECIFIC CLINICS (*Name & Date Range*): _____

☐ SPECIFIC PROVIDERS (*Name & Date Range*): _____

☐ DATE RANGE _____

☐ OPERATIVE/CLINICAL PROCEDURES (*Name & Date*): _____

☐ LAB RESULTS:

☐ SPECIFIC TESTS (*Name & Date*): _____


☐ DATE RANGE _____

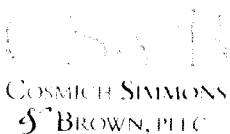
☐ RADIOLOGY REPORTS (*Name & Date*): _____

☐ LIST OF ACTIVE MEDICATIONS: _____

☐ FLU VACCINATION (*Dose, Lot Number, Date & Location*): _____

☐ OTHER (*Describe*): _____

LAST NAME- FIRST NAME- MIDDLE INITIAL Lavine, Kevin D.		LAST 4 SSN [REDACTED]	DATE OF BIRTH [REDACTED]
SENSITIVE DIAGNOSES: REVIEW AND, IF APPROPRIATE, COMPLETE WHEN RELEASE IS FOR ANY PURPOSE OTHER THAN TREATMENT. I request and authorize Department of Veterans Affairs to release the information pertaining to the condition(s) below for the non-treatment purpose(s) listed in this authorization. <input type="checkbox"/> DRUG ABUSE <input type="checkbox"/> ALCOHOLISM OR ALCOHOL ABUSE <input type="checkbox"/> SICKLE CELL ANEMIA <input type="checkbox"/> HUMAN IMMUNODEFICIENCY VIRUS (HIV) I understand that information on these sensitive diagnoses may be released for treatment purposes without me checking the above boxes, and will be released even if the boxes are unchecked <u>unless</u> I indicate by checking the box below that I do not want this information released for this specific disclosure. <input type="checkbox"/> I do not want sensitive diagnoses released for treatment purposes under this specific authorization. I realize this does not impact other future requests unrelated to this authorization.			
AUTHORIZATION: I certify that this request has been made freely, voluntarily and without coercion and that the information given above is accurate and complete to the best of my knowledge. I understand that I will receive a copy of this form after I sign it. I may revoke this authorization in writing, at any time except to the extent that action has already been taken to comply with it. Written revocation is effective upon receipt by the Release of Information Unit at the facility housing records. Any disclosure of information carries with it the potential for unauthorized redisclosure, and the information may not be protected by federal confidentiality rules. I understand that the VA health care provider's opinions and statements are not official VA decisions regarding whether I will receive other VA benefits or, if I receive VA benefits, their amount. They may, however, be considered with other evidence when these decisions are made at a VA Regional Office that specializes in benefit decisions.			
EXPIRATION: Without my express revocation, the authorization will automatically expire <input type="checkbox"/> AFTER ONE-TIME DISCLOSURE, IF ALL NEEDS ARE SATISFIED <input checked="" type="checkbox"/> ON 10/16/2021 (enter a future date other than date signed by patient) <input type="checkbox"/> UNDER THE FOLLOWING CONDITION(S) _____			
PATIENT SIGNATURE (Sign in ink) 		DATE (mm/dd/yyyy) 10/18/19	
LEGAL REPRESENTATIVE SIGNATURE (if applicable) (Sign in ink)		DATE (mm/dd/yyyy)	
PRINT NAME OF LEGAL REPRESENTATIVE		RELATIONSHIP TO PATIENT	
FOR VA USE ONLY			
TYPE AND EXTENT OF MATERIAL RELEASED			
DATE RELEASED		RELEASED BY:	



Attorneys & Counselors at Law

Brannon L. Berry

brannon.berry@cs-law.com

Direct Dial: (601) 519-0328

Facsimile: (601) 863-0078

October 24, 2019

VIA CERTIFIED U.S. MAIL

United States Department of Justice
U.S. Attorney's Office
Southern District of Texas
1000 Louisiana, Ste. 200
Houston, TX 77002

ONE EASTOVER CENTER
100 VISION DRIVE, SUITE 200
JACKSON, MS 39211
T 601.863.2100
F 601.863.0078
WWW.CS-LAW.COM

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ST. LOUIS, MO
PITTSBURGH, PA

RE: Notice of Health Care Liability Claim and Authorizations for Release of
Medical Records; Kevin D. Lavine – March 2, 2019 Incident and Injury
at Michael E. DeBakey VA Medical Center

Dear Sir or Madam:

It is my understanding that the Office of General Counsel for the U.S. Department of Veterans Affairs never reviewed and/or unable to complete its evaluation of Mr. Lavine's claim. In light of the agency's failure to respond within six (6) months from the date the claim was received, I am enclosing the following on behalf of Kevin D. Lavine in accordance with Texas law:

- (1) Notice of Health Care Liability Claim;
- (2) Authorization Form for Release of Protected Health Information (Texas Civil Practice and Remedies Code, Section 74.052);
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- (4) Correspondence from the Office of General Counsel for the U.S. Department of Veterans Affairs, dated May 3, 2019, acknowledging receipt of administrative tort claim on April 8, 2019.

My hope is that this claim settles with sixty (60) days of your receipt of this letter. Please feel free to contact me at any time. If you cannot reach me at the office, you can call my cell at 601-672-3254.

All that is good,



Walker W. Jones III, TX Bar No. 796003
Brannon L. Berry, MS Bar No. 104811
COSMICH SIMMONS & BROWN,
PLLC

Attorneys for Kevin D. Lavine (Claimant)

Enclosures

To: United States Department of Justice
U.S. Attorney's Office
Southern District of Texas
1000 Louisiana, Ste. 2300
Houston, TX 77002

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In short, despite his size and post-op condition, the attending occupational therapist, Sasha M. Hill, OTR, CLT, did not utilize (nor have) a gait belt, walker, or any other stabilizing device to assist Mr. Lavine or to help Mr. Lavine accomplish the tasks asked of him during the occupational consult. On several occasions, Mr. Lavine asked Ms. Hill for her assistance in standing, which she repeatedly refused. When he asked if his wife could assist him (on not one, but two, occasions), Ms. Hill stated, “the devil is a lie.” Also, when Mr. Lavine started to fall, after following Ms. Hill's instructions to stand, he attempted to use her arms for support. Ms. Hill's response, however, was to jerk her arms back to prevent him from using her balance and stability. What's worse, after he fell, Ms. Hill made no attempt to render any form of aid or comfort. Further, upon information and belief, neither the medical center nor the treating medical providers conducted an adequate and/or proper screening, assessment, or intervention to mitigate or eliminate the risks of a fall or to protect against any potential injuries to his knee should such a fall occur.

An authorization for release of medical records related to this claim is enclosed as required by Section 74.052 of the Texas Civil Practice and Remedies Code.

If this claim is not settled within 60 days from the date of this notice, claimant will commence a legal action against the United States Department of Veterans Affairs / Michael E. DeBakey VA Medical Center based on this claim.

Dated: 10/24/19

Respectfully submitted,


Walker W. (“Bill”) Jones, III, TX Bar No. 796003
Brannon L. Berry, MS Bar No. 104811
Cosmich Simmons & Brown, PLLC
100 Vision Drive, Suite 200
Jackson, MS 39211
T: 601-519-0328
E: brannon.berry@cs-law.com

Attorneys for Kevin D. Lavine



Department of Veterans Affairs

REQUEST FOR AND AUTHORIZATION TO RELEASE HEALTH INFORMATION

PRIVACY ACT AND PAPER WORK REDUCTION ACT INFORMATION: The Paperwork Reduction Act of 1995 requires us to notify you that this information collection is in accordance with the clearance requirements of section 3507 of the Act. We may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a valid OMB number. We anticipate that the time expended by all individuals who must complete this form will average 2 minutes. This includes the time it will take to read the instructions, gather the necessary facts and fill out this form. The execution of this form does not authorize the release of information other than that specifically described below.

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TO: DEPARTMENT OF VETERANS AFFAIRS (Name and Address of VA Health Care Facility)

Michael E. DeBakey VA Medical Center

Release of Information Office

2002 Holcombe Blvd.

Houston, TX 77030

LAST NAME- FIRST NAME- MIDDLE INITIAL

Lavine, Kevin D.

LAST 4 SSN

DATE OF BIRTH

NAME AND ADDRESS OF ORGANIZATION, INDIVIDUAL, OR TITLE OF INDIVIDUAL TO WHOM INFORMATION IS TO BE RELEASED

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INFORMATION REQUESTED: Check applicable box(es) and state the extent or nature of information to be provided:

☐ HEALTH SUMMARY (Prior 2 Years)

☐ INPATIENT DISCHARGE SUMMARY (Dates): _____

☐ PROGRESS NOTES:

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☐ LAB RESULTS:

☐ SPECIFIC TESTS (Name & Date): _____


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☐ RADIOLOGY REPORTS (Name & Date): _____

☐ LIST OF ACTIVE MEDICATIONS: _____

☐ FLU VACCINATION (Dose, Lot Number, Date & Location) _____

☐ OTHER (Describe) _____

LAST NAME- FIRST NAME- MIDDLE INITIAL Lavine, Kevin D.	LAST 4 SSN [REDACTED]	DATE OF BIRTH [REDACTED]
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<input type="checkbox"/> DRUG ABUSE <input type="checkbox"/> ALCOHOLISM OR ALCOHOL ABUSE <input type="checkbox"/> SICKLE CELL ANEMIA <input type="checkbox"/> HUMAN IMMUNODEFICIENCY VIRUS (HIV)		
I understand that information on these sensitive diagnoses may be released for treatment purposes without me checking the above boxes, and will be released even if the boxes are unchecked <u>unless</u> I indicate by checking the box below that I do not want this information released for this specific disclosure.		
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EXPIRATION: Without my express revocation, the authorization will automatically expire.		
<input type="checkbox"/> AFTER ONE-TIME DISCLOSURE, IF ALL NEEDS ARE SATISFIED <input checked="" type="checkbox"/> ON <u>10/16/2021</u> (enter a future date other than date signed by patient) <input type="checkbox"/> UNDER THE FOLLOWING CONDITION(S) _____		
PATIENT SIGNATURE (Sign in ink) 		DATE (mm/dd/yyyy) <u>10/18/19</u>
LEGAL REPRESENTATIVE SIGNATURE (if applicable) (Sign in ink)		DATE (mm/dd/yyyy)
PRINT NAME OF LEGAL REPRESENTATIVE		RELATIONSHIP TO PATIENT
FOR VA USE ONLY		
TYPE AND EXTENT OF MATERIAL RELEASED		
DATE RELEASED		RELEASED BY:



COSMICH SIMMONS
& BROWN, PLLC

Attorneys & Counselors at Law

Brannon L. Berry

brannon.berry@cs-law.com

Direct Dial: (601) 519-0328

Facsimile: (601) 863-0078

October 24, 2019

VIA CERTIFIED U.S. MAIL

Michael E. DeBakey VA Medical Center
2002 Holcombe Blvd.
Houston, TX 77030

ONE EASTOVER CENTER
100 VISION DRIVE, SUITE 200
JACKSON, MS 39211
T 601.863.2100
F 601.863.0078
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Walker W. Jones, III, TX Bar No. 796003
Brannon L. Berry, MS Bar No. 104811
COSMICH SIMMONS & BROWN,
PLLC

Attorneys for Kevin D. Lavine (Claimant)

Enclosures

To: Michael E. DeBakey VA Medical Center - Houston, TX
2002 Holcombe Blvd.
Houston, TX 77030

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Department of Veterans Affairs

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Release of Information Office

2002 Holcombe Blvd.

Houston, TX 77030

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DATE OF BIRTH

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PRINT NAME OF LEGAL REPRESENTATIVE		RELATIONSHIP TO PATIENT	
FOR VA USE ONLY			
TYPE AND EXTENT OF MATERIAL RELEASED			
DATE RELEASED		RELEASED BY	



Attorneys & Counselors at Law

Brannon L. Berry

brannon.berry@cs-law.com

Direct Dial: (601) 519-0328

Facsimile: (601) 863-0078

October 24, 2019

VIA CERTIFIED U.S. MAIL

U.S. Department of Veterans Affairs

Office of Regional Counsel (02)

Attn: Kevin Curtis

6900 Alameda Road

Houston, TX 77030

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Walker W. Jones, III, TX Bar No. 796003

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**COSMICH SIMMONS & BROWN,
PLLC**

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Enclosures

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6900 Alameda Road
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Houston, TX 77030

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LAST 4 SSN

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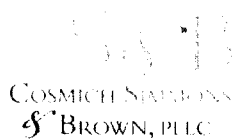
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LAST NAME- FIRST NAME- MIDDLE INITIAL Lavine, Kevin D.		LAST 4 SSN [REDACTED]	DATE OF BIRTH [REDACTED]
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AUTHORIZATION: I certify that this request has been made freely, voluntarily and without coercion and that the information given above is accurate and complete to the best of my knowledge. I understand that I will receive a copy of this form after I sign it. I may revoke this authorization in writing, at any time except to the extent that action has already been taken to comply with it. Written revocation is effective upon receipt by the Release of Information Unit at the facility housing records. Any disclosure of information carries with it the potential for unauthorized redisclosure, and the information may not be protected by federal confidentiality rules. I understand that the VA health care provider's opinions and statements are not official VA decisions regarding whether I will receive other VA benefits or, if I receive VA benefits, their amount. They may, however, be considered with other evidence when these decisions are made at a VA Regional Office that specializes in benefit decisions.			
EXPIRATION: Without my express revocation, the authorization will automatically expire <input type="checkbox"/> AFTER ONE-TIME DISCLOSURE, IF ALL NEEDS ARE SATISFIED <input checked="" type="checkbox"/> ON 10/16/2021 (enter a future date other than date signed by patient) <input type="checkbox"/> UNDER THE FOLLOWING CONDITION(S):			
PATIENT SIGNATURE (Sign in ink) 		DATE (mm/dd/yyyy) 10/18/19	
LEGAL REPRESENTATIVE SIGNATURE (if applicable) (Sign in ink)		DATE (mm/dd/yyyy)	
PRINT NAME OF LEGAL REPRESENTATIVE		RELATIONSHIP TO PATIENT	
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TYPE AND EXTENT OF MATERIAL RELEASED			
DATE RELEASED		RELEASED BY:	



Attorneys & Counselors at Law

Brannon L. Berry

brannon.berry@cs-law.com

Direct Dial: (601) 519-0328

Facsimile: (601) 863-0078

October 24, 2019

VIA CERTIFIED U.S. MAIL

U.S. Department of Veterans Affairs
810 Vermont Avenue, NW
Washington, D.C. 20420

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RE: Notice of Health Care Liability Claim and Authorizations for Release of
Medical Records; Kevin D. Lavine – March 2, 2019 Incident and Injury
at Michael E. DeBakey VA Medical Center

Dear Sir or Madam:

It is my understanding that the Office of General Counsel for the U.S. Department of Veterans Affairs never reviewed and/or unable to complete its evaluation of Mr. Lavine's claim. In light of the agency's failure to respond within six (6) months from the date the claim was received, I am enclosing the following on behalf of Kevin D. Lavine in accordance with Texas law:

- (1) Notice of Health Care Liability Claim;
- (2) Authorization Form for Release of Protected Health Information (Texas Civil Practice and Remedies Code, Section 74.052);
- (3) Request for and Authorization to Release Health Information (VA Form 10-5345); and
- (4) Correspondence from the Office of General Counsel for the U.S. Department of Veterans Affairs, dated May 3, 2019, acknowledging receipt of administrative tort claim on April 8, 2019.

My hope is that this claim settles with sixty (60) days of your receipt of this letter. Please feel free to contact my at any time. If you cannot reach me at the office, you can call my cell at 601-672-3254.

All that is good,

A handwritten signature in black ink, appearing to be 'W. Jones', written over a horizontal line.

Walker W. Jones, HI, TX Bar No. 796003
Brannon L. Berry, MS Bar No. 104811
COSMICH SIMMONS & BROWN,
PLLC

Attorneys for Kevin D. Lavine (Claimant)

Enclosures

To: United States Department of Veterans Affairs
810 Vermont Avenue, NW
Washington, D.C. 20420

CLAIMANT KEVIN D. LAVINE'S NOTICE OF HEALTH CARE LIABILITY CLAIM

Pursuant to the Texas Medical Liability Act, Section 74.051 of the Texas Civil Practice and Remedies Code, please take notice that Kevin D. Lavine has a health care liability claim against Michael E. DeBakey VA Medical Center, 2002 Holcombe Blvd., Houston, Texas 77030 in Harris County, Texas. The claim arises from events surrounding the care received by Kevin D. Lavine on or about March 2, 2019, and thereafter, specifically, for the fall he suffered during an occupational consult—which resulted in him, at 6 ft. 4 in., 300 lbs., being mechanically lifted off the floor and subjected to an additional emergency surgery, blood loss from his newly operated on knee (for which he received two/three units of blood), and a substantial amount of unnecessary, additional pain and suffering.

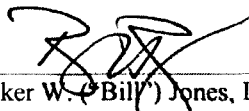
In short, despite his size and post-op condition, the attending occupational therapist, Sasha M. Hill, OTR, CLT, did not utilize (nor have) a gait belt, walker, or any other stabilizing device to assist Mr. Lavine or to help Mr. Lavine accomplish the tasks asked of him during the occupational consult. On several occasions, Mr. Lavine asked Ms. Hill for her assistance in standing, which she repeatedly refused. When he asked if his wife could assist him (on not one, but two, occasions), Ms. Hill stated, "the devil is a lie." Also, when Mr. Lavine started to fall, after following Ms. Hill's instructions to stand, he attempted to use her arms for support. Ms. Hill's response, however, was to jerk her arms back to prevent him from using her balance and stability. What's worse, after he fell, Ms. Hill made no attempt to render any form of aid or comfort. Further, upon information and belief, neither the medical center nor the treating medical providers conducted an adequate and/or proper screening, assessment, or intervention to mitigate or eliminate the risks of a fall or to protect against any potential injuries to his knee should such a fall occur.

An authorization for release of medical records related to this claim is enclosed as required by Section 74.052 of the Texas Civil Practice and Remedies Code.

If this claim is not settled within 60 days from the date of this notice, claimant will commence a legal action against the United States Department of Veterans Affairs / Michael E. DeBakey VA Medical Center based on this claim.

Dated: 10/24/19

Respectfully submitted,


Walker W. Jones, III, TX Bar No. 796003
Brannon L. Berry, MS Bar No. 104811
Cosmich Simmons & Brown, PLLC
100 Vision Drive, Suite 200
Jackson, MS 39211
T: 601-519-0328
E: brannon.berry@cs-law.com

Attorneys for Kevin D. Lavine



Department of Veterans Affairs

REQUEST FOR AND AUTHORIZATION TO RELEASE HEALTH INFORMATION

PRIVACY ACT AND PAPER WORK REDUCTION ACT INFORMATION: The Paperwork Reduction Act of 1995 requires us to notify you that this information collection is in accordance with the clearance requirements of section 3507 of the Act. We may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a valid OMB number. We anticipate that the time expended by all individuals who must complete this form will average 2 minutes. This includes the time it will take to read the instructions, gather the necessary facts and fill out this form. The execution of this form does not authorize the release of information other than that specifically described below.

The information requested on this form is solicited under Title 38 U.S.C. The form authorizes release of information in accordance with the Health Insurance Portability and Accountability Act, 45 CFR Parts 160 and 164; 5 U.S.C. 552a; and 38 U.S.C. 5701 and 7332 that you specify. Your disclosure of the information requested on this form is voluntary. However, if the information including the last four of your Social Security Number (SSN) and Date of Birth (used to locate records for release) is not furnished completely and accurately, VA will be unable to comply with the request. The Veterans Health Administration may not condition treatment, payment, enrollment or eligibility on signing the authorization. VA may disclose the information that you put on the form as permitted by law. VA may make a "routine use" disclosure of the information as outlined in the Privacy Act system of records notices identified as 24VA10P2 "Patient Medical Record VA", 08VA05 "Employee Medical File System Records (Title 38)-VA" and in accordance with the Notice of Privacy Practices. VA may also use this information to identify veterans and person claiming or receiving VA benefits and their records, and for other purposes authorized or required by law.

TO: DEPARTMENT OF VETERANS AFFAIRS (Name and Address of VA Health Care Facility)

Michael E. DeBakey VA Medical Center

Release of Information Office

2002 Holcombe Blvd.

Houston, TX 77030

LAST NAME- FIRST NAME- MIDDLE INITIAL

Lavine, Kevin D.

LAST 4 SSN

[REDACTED]

DATE OF BIRTH

[REDACTED]

NAME AND ADDRESS OF ORGANIZATION, INDIVIDUAL, OR TITLE OF INDIVIDUAL TO WHOM INFORMATION IS TO BE RELEASED

PURPOSE(S) OR NEED: Information is to be used by the individual for:

☐

TREATMENT

☐

BENEFITS

☒

LEGAL

☐

EMPLOYMENT

☐

OTHER (Please specify) _____

INFORMATION REQUESTED: Check applicable box(es) and state the extent or nature of information to be provided:

☐

HEALTH SUMMARY (Prior 2 Years)

☐

INPATIENT DISCHARGE SUMMARY (Dates): _____

☐

PROGRESS NOTES:

☐

SPECIFIC CLINICS (Name & Date Range): _____

☐

SPECIFIC PROVIDERS (Name & Date Range): _____

☐

DATE RANGE: _____

☐

OPERATIVE/CLINICAL PROCEDURES (Name & Date): _____

☐

LAB RESULTS:

☐

SPECIFIC TESTS (Name & Date): _____

☐

DATE RANGE: _____

☐

RADIOLOGY REPORTS (Name & Date): _____

☐

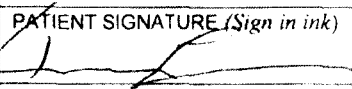
LIST OF ACTIVE MEDICATIONS: _____

☐

FLU VACCINATION (Dose, Lot Number, Date & Location) _____

☐

OTHER (Describe): _____

LAST NAME- FIRST NAME- MIDDLE INITIAL Lavine, Kevin D.		LAST 4 SSN [REDACTED]	DATE OF BIRTH [REDACTED]
SENSITIVE DIAGNOSES: REVIEW AND, IF APPROPRIATE, COMPLETE WHEN RELEASE IS FOR ANY PURPOSE OTHER THAN TREATMENT. I request and authorize Department of Veterans Affairs to release the information pertaining to the condition(s) below for the non-treatment purpose(s) listed in this authorization. <input type="checkbox"/> DRUG ABUSE <input type="checkbox"/> ALCOHOLISM OR ALCOHOL ABUSE <input type="checkbox"/> SICKLE CELL ANEMIA <input type="checkbox"/> HUMAN IMMUNODEFICIENCY VIRUS (HIV) I understand that information on these sensitive diagnoses may be released for treatment purposes without me checking the above boxes, and will be released even if the boxes are unchecked <u>unless</u> I indicate by checking the box below that I do not want this information released for this specific disclosure <input type="checkbox"/> I do not want sensitive diagnoses released for treatment purposes under this specific authorization. I realize this does not impact other future requests unrelated to this authorization.			
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PRINT NAME OF LEGAL REPRESENTATIVE		RELATIONSHIP TO PATIENT	
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Total Postage and Fees	\$ 7.10
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<input type="checkbox"/> Adult Signature Restricted Delivery	\$
Postage	\$ 6.80
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